

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRADLEY J. PEPER,

Plaintiff,

v.

PORT ORCHARD PRISON
AUTHORITIES et al.,

Defendants.

CASE NO. 3:20-cv-05160-BHS-JRC

ORDER TO SHOW CAUSE OR
AMEND COMPLAINT

This matter is before the Court on its Order Renoting *In Forma Pauperis* Application and Directing Plaintiff to File a New Proposed Complaint and plaintiff's proposed first amended complaint. Dkts. 3, 4

Having reviewed and screened plaintiff's proposed amended complaint under 28 U.S.C. § 1915A, the Court finds that plaintiff's proposed amended complaint states no cognizable claim under 42 U.S.C. § 1983 and contains no plausible factual allegations linking any particular person to an alleged constitutional violation. Accordingly, the Court again declines to rule on plaintiff's application to proceed *in forma pauperis* (Dkt 1) at this time. However, as plaintiff

1 appears to raise new claims, the Court offers plaintiff additional leave to file amended pleadings
2 by **June 5, 2020**, to cure deficiencies identified herein.

3 Failure to comply with this Order by submitting a new proposed amended complaint on
4 or before **June 5, 2020**, will result in the Court recommending denial of the *in forma pauperis*
5 application and dismissal of the matter without prejudice.

6 **BACKGROUND**

7 Plaintiff Bradley J. Peper, who proceeds *pro se* and is currently incarcerated in the King
8 County Jail, initiated this action by filing an *in forma pauperis* application in February 2020. *See*
9 Dkt. 1. Plaintiff claimed that his constitutional rights were violated when corrections officer
10 allegedly slammed his hand shut in a door, when unknown persons allegedly beat him during
11 incarceration, and when an unknown officer allegedly falsely arrested and searched him. *See*
12 Dkt. 1-1. It was unclear from plaintiff's proposed complaint whether plaintiff was charged with
13 or convicted of any crime related to the allegedly false arrest and unconstitutional search. *See*
14 Dkt. 3, at 3.

15 The Court subsequently directed plaintiff to file an amended proposed complaint if he
16 intended to pursue the 42 U.S.C. § 1983 civil rights action. *See* Dkt. 3, at 4. The Court also
17 cautioned plaintiff that if he was convicted of a crime related to the actions alleged in his
18 proposed complaint (Dkt. 1-1), then he must show that his conviction was reversed, expunged,
19 declared invalid, or otherwise called into question before he could bring claims for violation of
20 the Fourth Amendment. Dkt. 3, at 3.

21 On April 10, 2020, plaintiff filed a proposed amended complaint. Dkt. 4. Plaintiff now
22 brings claims against Port Orchard prison authorities, whom he identifies as "Hector" (a prison
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1 guard) and unnamed “trained prison officials”; arresting officers; and a hospital where plaintiff’s
2 hand was treated. Dkt. 4, at 1, 3. Plaintiff now asserts the following claims:

3 (1) Violation of the First Amendment based on inability to receive mail. Plaintiff

4 provides no additional factual support as to why his alleged inability to receive mail
5 violated the First Amendment, nor does plaintiff identify any individual allegedly
6 responsible for this deprivation;

7 (2) Violation of the Second Amendment based on “gun rights against crime in

8 [A]merica.” Plaintiff alleges this constitutional violation happened during a different
9 time period; however, he does not identify how his rights under the Second
10 Amendment were allegedly violated, nor does he identify any individual allegedly
11 responsible for such a deprivation;

12 (3) Violation of the Fourth Amendment based on false arrest and unconstitutional search

13 and seizure “on which criminal charges are based.” Plaintiff specifically alleges that
14 in June or July 2017, two unnamed Port Orchard officers falsely arrested him and
15 conducted an unconstitutional search and seizure of his personal property at a
16 Starbucks Coffee store location. Plaintiff further alleges that he was released from
17 Port Orchard Jail, but he was later “rebooked.” It is unclear whether plaintiff’s
18 subsequent incarceration is related to his arrest in June or July 2017 or whether the
19 earlier charges were dropped; and

20 (4) Violation of the Eighth Amendment because “trained prison officials” allegedly broke

21 plaintiff’s hand and were allegedly deliberately indifferent to plaintiff’s medical
22 needs. Plaintiff specifically alleges that “before [his] hand was broke[n] – [he] was
23 cooperative.” Plaintiff further alleges that after his hand was broken, he “pass[ed] out
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1 from pain” and was “ignored until [prison officials] felt sorry for [him]” and
2 “released [him].” Plaintiff alleges that he complained and asked for medical
3 attention, but his complaint was “refused.”
4 Dkt. 4, at 4–7. Plaintiff also appears to raise a disability discrimination claim under 28 C.F.R. §
5 35.130(b)(7) and the Americans with Disabilities Act. *See id.* at 8. Plaintiff does not allege any
6 facts regarding allegedly discriminatory acts by the named defendants. Plaintiff also includes a
7 “habeas corpus petition” in the proposed amended complaint related to alleged violations of the
8 Fourth Amendment. *Id.* at 7. Plaintiff identifies himself simultaneously as a pretrial and civilly
9 committed detainee. *Id.* at 2.

10 DISCUSSION

11 To prevail on a claim under 42 U.S.C. § 1983, a plaintiff must establish that a person
12 acting under color of state law deprived him of a right secured by federal constitutional or
13 statutory law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

14 In the proposed amended complaint (Dkt. 4), plaintiff again fails to specifically identify
15 any particular person acting under state law who violated his constitutional or statutory rights.
16 His identification of certain “prison authorities” is inadequate. Although plaintiff names
17 “Hector, a prison guard” at one point, he does not identify any particular actions that “Hector”
18 took or how “Hector” was involved in the alleged false arrest, improper search and seizure,
19 breaking of his hand, deprivation of mail, or any discriminatory acts. Section 1983 does not
20 make defendants liable for their official or supervisory roles alone; it requires that a defendant
21 personally participated in the alleged events. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
22 1989).

1 Plaintiff again names a hospital as a defendant to this action, yet plaintiff fails to
2 plausibly allege any facts that the hospital was acting under color of state law, that there was an
3 official policy or custom at issue, or that the policy or custom violated plaintiff's constitutional
4 rights. In order to pursue a 42 U.S.C. § 1983 claim against a hospital (if a private entity),
5 plaintiff must plausibly allege that the entity was acting under color of state law and that, if a
6 constitutional violation occurred, the violation was caused by the hospital's official policy or
7 custom. *See Tsao v. Desert Palace*, 698 F.d 1128, 1139 (9th Cir. 2012).

8 Additionally, it remains unclear to the Court whether plaintiff is challenging the validity
9 of his continued pretrial detention under pending charges or whether he is challenging a prior
10 charge and/or conviction of any crime related to the allegedly false arrest and unconstitutional
11 search and seizure. Plaintiff alleges that he was released after arrest in or about June or July
12 2017; however, he was rebooked on a later date. Dkt. 4, at 5. As alleged in the proposed
13 amended complaint, the Court is unable to determine why plaintiff was searched and arrested
14 and whether those charges were dropped, whether charges are pending, or whether plaintiff was
15 convicted of a crime. Plaintiff also appears to merge a habeas petition with his 42 U.S.C. § 1983
16 civil rights complaint. *See* Dkt. 4, at 7.

17 If plaintiff is seeking damages resulting from an allegedly invalid arrest or pretrial
18 detention, and he has been convicted of a crime related to these actions, he must show that his
19 conviction was reversed, expunged, declared invalid, or otherwise called into question before he
20 can bring his claims for violation of the Fourth Amendment. *See Heck v. Humphrey*, 512 U.S.
21 477, 486–87 (1994). Alternatively, if plaintiff seeks damages as a result of an allegedly false
22 arrest, and he has not been convicted of any crime related to that arrest, plaintiff must show that
23 the allegedly false arrest has not resulted in any conviction of a crime. *See Wallace v. Kato*, 549
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U.S. 384, 393 (2007) (discussing that the rule in *Heck v. Humphrey*, 512 U.S. at 486–87, does not bar a claim for damages under 42 U.S.C. § 1983 where there has been no conviction).

If plaintiff is challenging the validity of his continued pretrial detention/physical confinement and seeking release from custody, this claim must be raised in a habeas corpus petition under 28 U.S.C. § 2241 rather than a 42 U.S.C. § 1983 complaint. An “action lying at the core of habeas corpus is one that goes directly to the constitutionality of the prisoner’s physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration. With regard to such actions, habeas corpus is now considered the prisoner’s exclusive remedy.” *Preiser v. Rodriguez*, 411 U.S. 475, 503 (1973) (internal quotation marks and citation omitted). Section 2241(c)(3) permits federal courts to grant relief to a pretrial detainee held “in custody in violation of the Constitution.” 28 U.S.C. § 2241(c)(3); *see also McNeely v. Blanas*, 336 F.3d 822, 824 n. 1 (9th Cir. 2003). “A civil rights action, in contrast, is the proper method of challenging conditions of confinement.” *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (internal quotation marks and citation omitted).

Thus, while it is unclear from the proposed amended complaint, to the extent plaintiff challenges the fact of his custody and seeks immediate release, his claims are properly raised in a 28 U.S.C. § 2241 petition, not a 42 U.S.C. § 1983 complaint.

CONCLUSION AND DIRECTIONS TO CLERK AND PLAINTIFF

If plaintiff intends to continue pursuing this civil rights action in this Court, he must file an amended proposed complaint on the form provided by the Court and within the amended complaint, he must write a short, plain statement telling the Court: (1) the constitutional or federal right plaintiff believes was violated; (2) the name of the person or persons who violated the right; (3) exactly what the individual did or failed to do; (4) how the action or inaction of the

1 individual is connected to the violation of plaintiff's constitutional or federal rights; and (5) what
2 specific injury plaintiff suffered because of the individual's conduct. *See Rizzo v. Goode*, 423
3 U.S. 362, 371–72, 377 (1976).

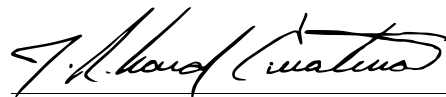
4 The amended proposed complaint must be legibly written or typed in its entirety, it
5 should be an original and not a copy, it should contain the same case number, and it may not
6 incorporate any part of the original complaint by reference. The amended complaint will act as a
7 complete substitute for the original complaint and not as a supplement. An amended complaint
8 supersedes all previous complaints. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.
9 1997) *overruled in part on other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir.
10 2012). Therefore, the amended complaint must be complete in itself, and all facts and causes of
11 action alleged in the original complaint that are not alleged in the amended complaint are
12 waived. *Forsyth*, 114 F.3d at 1474. The Court will screen the amended complaint to determine
13 whether it contains factual allegations linking each defendant to the alleged violations of
14 plaintiff's rights.

15 To the extent plaintiff, as a pretrial detainee, seeks immediate release from custody, he
16 may file a separate 28 U.S.C. § 2241 habeas petition challenging the fact or duration of his
17 custody on the form provided by the Court.

18 The Clerk is directed to send plaintiff the appropriate forms for a 42 U.S.C. § 1983 civil
19 rights complaint and a 28 U.S.C. § 2241 habeas petition and a copy of this Order. The Clerk's
20 Office shall re-note plaintiff's application to proceed *in forma pauperis* for consideration on
21 **June 5, 2020**. Plaintiff shall comply with this Order by submitting his amended proposed 42
22 U.S.C. § 1983 complaint on the form provided by this Court on or before **June 5, 2020**, or the
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undersigned will recommend denial of his *in forma pauperis* application and dismissal of this matter without prejudice.

Dated this 5th day of May, 2020.

A handwritten signature in black ink, appearing to read "J. Richard Creatura", written over a horizontal line.

J. Richard Creatura
United States Magistrate Judge